

# Deaf Jurors

(compiled by RID LIMS members 2022)

United States v. Dempsey, 830 F.2d 1084 (10th Cir. 1987)

The court found:

(1) juror's deafness did not make juror unqualified for service on federal jury, and (2) presence of interpreter for deaf juror during jury deliberations did not deprive defendant of fair and impartial trial by jury.

*People v. Guzman*, 76 N.Y.2d 1, 556 N.Y.S.2d 7, 555 N.E.2d 259 (N.Y. 1990)

<https://casetext.com/case/people-v-guzman-78>

## American Bar Association COURT ACCESS for Individuals Who Are Deaf and Hard of Hearing A GUIDE

THE LAW **Title II of the Americans with Disabilities Act (ADA)** provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

1 A “public entity” includes “any . . . instrumentality of a State or States or local government.”

2 Because courts are components of either a state or local government, they are public entities, and therefore must ensure that their services, programs, and activities are accessible to people with disabilities. **Section 504 of the Rehabilitation Act (Section 504)** prohibits any program or activity receiving federal financial assistance, or conducted by any Executive agency or the U.S. Postal Service, from excluding participation by, denying benefits to, or discriminating against a qualified individual with a disability solely because of a disability.

3 A “program or activity” covers all the operations of “a department, agency, special purpose district, or other instrumentality of a State or of a local government.”

4 The Act applies to state and local courts that receive federal financial assistance and requires those recipients to ensure communications access for persons with disabilities. “Both the ADA and Section 504 apply to any type of state or local court proceeding, including civil, criminal, traffic, small claims, domestic relations, probate, juvenile, family, and other specialized courts. The application of these federal laws extends to programs and services conducted or offered by court systems, including interactions with court personnel, educational activities, and marriage ceremonies performed by court personnel or magistrates acting in their capacity as government officials. Neither the ADA nor Section 504 apply to federal courts.

5 Federal courts are governed by the Court Interpreters Act of 1978 and judicial policy 1 42 U.S.C. § 12132. 2 Id. § 12131(1)(B). 3 29 U.S.C. § 794(a). 4 Id. § 794(b)(1)(A). 5 42 U.S.C. § 12131(1)(B); 29 U.S.C. § 794(b)(1)(A). Both the ADA and Section 504 apply to any type of state or local court proceeding, including civil, criminal, traffic, small claims, domestic relations, probate, juvenile, family, and other specialized courts.”

7 COURT ACCESS FOR INDIVIDUALS WHO ARE DEAF AND HARD OF HEARING: A GUIDE Under the Act, a certified interpreter (or otherwise qualified interpreter if no certified interpreter is available) must be appointed at court expense in judicial proceedings instituted by the United States if the presiding judicial officer determines that a hearing impairment inhibits a party’s (includes a defendant in a criminal case) comprehension of the proceedings or communications with counsel or the presiding judicial officer, or a witness’s comprehension of questions and presentation of testimony.

6 A “presiding judicial officer” is any judge of a U.S. district court and includes bankruptcy judges, magistrate judges, and U.S. attorneys with respect to grand jury proceedings.

7 If the presiding judicial officer determines that a party, witness, or other participant in a judicial proceeding has a hearing impairment, the Act permits the appointment, at court expense, of a certified or otherwise qualified sign language interpreter—whether or not the proceeding is instituted by the United States.

8 As adopted in September 1995, the official federal policy of the Judicial Conference of the Administrative Office of the United States Courts requires all federal courts to “provide reasonable accommodations to persons with communications disabilities.”

9 Many states have laws, regulations, and court rules that specifically require the provision of services to enable access for qualified persons with disabilities who are participating in court activities. For example, the California Rules of Court state: “It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system.”

10 Florida’s Rule of Judicial Administration 2.540 provides: “Qualified individuals with a disability will be provided, at the court’s expense, with accommodations, reasonable modifications to rules, policies, or practices, or the provision of auxiliary aids and services, in order to participate in programs or activities provided by the courts of this state.”

11 The court may deny a request only if it determines that the “requested accommodation would create an undue financial or administrative burden on the court or would fundamentally alter the nature of the service, program, or activity.”<sup>12</sup>

**Jurors and prospective jurors** may require auxiliary aids and services for all interactions with the court and with other jurors. This includes any time that the jury is expected to be in the courthouse, including during voir dire, court proceedings, and deliberations, as well as interactions with the bailiff.

<https://www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/court-access-guide-lr-intractv-accsb-rev022317.pdf>

## Federal and State laws

Regarding state laws that are conflicting with or more restrictive than the federal constitution, see the Supremacy Clause for the proposition, that state conflicting statutes give way to federal statutes and laws.

Title II of the Americans with Disabilities Act has been tested on various issues in front of the Supreme Court regarding disability access to state courts in <https://www.oyez.org/cases/2003/02-1667> (Tennessee v. Lane, 2004)

## National Association of the Deaf: Communication Access in State Courts

### Specific Recommendations

The NAD provides the following recommendations for courts to make their courthouses and court proceedings accessible to deaf people. It is important to note that these recommendations are not exhaustive. The determination of which auxiliary aid or service to provide in any given circumstance must be made on an individual, case-by-case basis.

- Make available appropriate auxiliary aids and services for deaf litigants, defendants, jurors, spectators, traffic violators, conservators, victims, family members, and attorneys. Appropriate auxiliary aids and services include, but are not limited to the following: qualified sign language interpreters, oral interpreters, certified deaf interpreters,<sup>4</sup> CART services, and assistive listening systems and devices. In certain situations, such as long hearings or those with multiple deaf individuals, the court will need to hire several qualified interpreters to ensure effective communication.

## Communication Access in Federal Courts

### 3. Jurors.

The determination of whether a prospective juror with a communications disability is legally qualified to serve as a juror is one for the judgment of the trial court under the Jury Selection and Service Act, and that determination is not governed or effected by these guidelines. However, where an individual with a communications disability is found so qualified, a sign language interpreter or other appropriate auxiliary aid or service should be provided under these guidelines.

<https://www.nad.org/resources/justice/courts/communication-access-in-federal-courts/>

# State statutes:

## California

Sacramento Superior Court, we have had Deaf jurors serve on panels since 1978. Until the COVID-19 pandemic hit, we had potential Deaf jurors almost weekly. Those empaneled are approximately the same percentage and hearing potential jurors, about one out of four. Since 1978 we have had some 2,000 Deaf potential jurors and approximately 500 or 600 actually empaneled and serve as jurors.

Our California Evidence Code 754 is clear that the qualified interpreter is one who holds a nationally-recognized certification for legal interpreting, this has typically meant one who holds the SC:L.

## Colorado

Colorado's legislation -- specifically 13-90-204 (1) (b) You can read the entire legislation at <https://ccdhh.com/index.php/legislation/>

### **13-90-204. Appointment of auxiliary services providers**

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**(1)** An appointing authority shall provide a qualified auxiliary services provider to interpret the proceedings to a person who is deaf, hard of hearing, or deafblind and to interpret the statements of the person who is deaf, hard of hearing, or deafblind in the following instances:

**(a)** When a person who is deaf, hard of hearing, or deafblind is present and participating as the principal party of interest or a witness at any civil or criminal proceeding, including but not limited to any criminal or civil court proceeding in the state court system; a court-ordered or court-provided alternative dispute resolution, mediation, arbitration, or treatment; an administrative, commission, or agency hearing; or a hearing of a licensing authority of the state;

**(b)** When a person who is deaf, hard of hearing, or deafblind is involved in any stage of grand jury or jury proceedings as a potential or selected juror;

**(c)** When a juvenile whose parent or parents are deaf, hard of hearing, or deafblind is brought before a court for any reason;

**(d)** When a person who is deaf, hard of hearing, or deafblind is arrested and taken into custody for an alleged violation of a criminal law of the state or any of its political subdivisions. Such appointment shall be made prior to any attempt to notify the arrestee of his or her constitutional rights and prior to any attempt to interrogate or to take a statement from the person; except that a person who is deaf, hard of hearing, or deafblind and who is otherwise eligible for release shall not be held pending the arrival of a qualified interpreter.

**(e)** (Deleted by amendment, L. 2006, p. 1088, § 4, effective May 25, 2006.)

**(f)** When effective communication cannot be established without an auxiliary service and when an alleged victim or witness is a person who is deaf, hard of hearing, or deafblind, who uses sign language for effective communication, and who is questioned or otherwise interviewed by a person having a law enforcement or prosecutorial function in any criminal investigation, except where the length, importance, or complexity of the communication does not warrant provision of an auxiliary service. Assessment of whether the length, importance, or complexity of the communication warrants provision of an auxiliary service shall be made in accordance with United States department of justice regulations effectuating Title II of the federal "Americans with Disabilities Act of 1990", as from time to time may be amended, Pub.L. 101-336, codified at 42 U.S.C. sec. 12101 et seq., including regulations, analysis, and technical assistance.

**(g)** (Deleted by amendment, L. 2007, p. 2026, § 29, effective June 1, 2007.)

**(1.5)** Nothing in this part 2 shall be construed to provide less than is required by Title II of the federal "Americans with Disabilities Act of 1990", as from time to time may be amended, Pub.L. 101-336, codified at 42 U.S.C. sec. 12101 et seq., and its implementing regulations.

**(2)** Nothing contained in this section shall be construed to preclude the use of services of an interpreter in civil proceedings.

# Maine

Maine Courts about accommodating Deaf jurors:

<https://www.courts.maine.gov/programs/lep/asl.html>

# Oregon

**ORS 10.115 Jurors with disabilities.** (1) As used in this section:

(a) “Assistive communication device” means any equipment designed to facilitate communication by a person with a disability.

(b) “Juror with a disability” means a person who is hard of hearing or speech impaired, who is summoned to serve as a juror and whose name is drawn for grand jury or trial jury service.

(c) “Qualified interpreter” means a person who is readily able to communicate with a juror with a disability, accurately communicate the proceedings to the juror and accurately repeat the statements of the juror.

(2) The court to which a juror with a disability is summoned, upon written request by the juror and upon a finding by the court that the juror requires the services of a qualified interpreter or the use of an assistive communication device in examination of the juror as to the juror’s qualifications to act as a juror or in performance by the juror of the functions of a juror, shall appoint a qualified interpreter for the juror and shall fix the compensation and expenses of the interpreter and shall provide an appropriate assistive communication device if needed. The compensation and expenses of an interpreter so appointed and the cost of any assistive communication device shall be paid by the public authority required to pay the fees due to the juror.

(3) An oath or affirmation shall be administered to a qualified interpreter appointed for a juror with a disability, in substance that the interpreter will accurately communicate the proceedings to the juror and accurately repeat the statements of the juror.

(4) A qualified interpreter appointed for a juror with a disability, or a person operating an assistive communication device for a juror with a disability, shall be present during deliberations by the jury on which the juror serves. An interpreter or person operating an assistive communication device may not participate in the jury deliberations in any manner except to facilitate communication between the juror with a disability and the other jurors or other persons with whom the jurors may communicate, and the court shall so instruct the jury and the interpreter.

(5) When a juror with a disability serves on a trial jury, the court shall instruct the jury on the presence of the qualified interpreter or person operating an assistive communication device. [1985 c.703 §9; 1989 c.224 §4; 1991 c.750 §6; 2007 c.70 §6; 2007 c.96 §1]

# Washington

## **RCW 2.36.070**

### **Qualification of juror.**

A person shall be competent to serve as a juror in the state of Washington unless that person:

- (1) Is less than eighteen years of age;
- (2) Is not a citizen of the United States;
- (3) Is not a resident of the county in which he or she has been summoned to serve;
- (4) Is not able to communicate in the English language; or
- (5) Has been convicted of a felony and has not had his or her civil rights restored.

<https://app.leg.wa.gov/RCW/default.aspx?cite=2.36.070>

# Australia

Do Deaf people have the right to serve as jurors in Australia? JEMINA NAPIER and ALASTAIR McEWIN

<https://core.ac.uk/download/pdf/29093112.pdf>